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SUBJECT: EU MIGRATION POLICY ELUSIVE

¶1. France, which will assume the rotating EU presidency on July 1, has made migration one of its top presidency priorities, with President Sarkozy saying the EU should speak with one voice on migration policy. But moves toward a common migration policy reveal tensions over Commission versus member state competencies, law enforcement versus protection concerns, and perceptions versus realities of migrants' cultural and economic impact on receiving societies. As Ambassador Swing arrives in Brussels May 16 for a series of meetings with the EU and the Belgian government, he will find an EU grappling with balancing the need for migrant labor with security and cultural concerns. The Commission is working on numerous migration initiatives, including a common asylum policy, a "blue card" for skilled migrants, support for circular migration, and a returns directive for those denied asylum.

Who has authority? Member states versus Commission  
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¶2. The lines between member state and Commission authority are contentious on most EU issues, but perhaps nowhere more so than in Justice and Home Affairs (JHA), where member states guard closely their sovereignty over the movement of people on their territory. In broad terms, the Commission does not have competency (authority) over migration within the EU, but does have competency over numerous issues involving migration from outside the EU. Internal migration is substantial, primarily from East to West, and can become contentious as when the "Polish plumber" became shorthand to describe the hundreds of thousands of Eastern Europeans who migrated West, primarily to the UK and Ireland, after 10 new countries joined the EU in 2004. But it is primarily migration from outside the EU that raises difficult questions about Commission competencies and reveals differences in policies among EU member states. The issue took on a very public face starting in 2005 when thousands of African migrants began arriving on European shores on rickety boats while others drowned en route. The Commission responded by increasing its patrols through Frontex, the EU's border protection agency, and by reaching out to African governments to more closely monitor the movement of illegal aliens through their territory and to take back their citizens deported from Europe. As a result, the number of undocumented migrants arriving in the Canary Islands, a favorite port of call for Africans, fell 70 percent from 2006 to 2007, according to Frontex.

¶3. The influx of African migrants and thousands of asylum seekers from Iraq brought to light differences both in the way EU member states treat migrants and the disproportionate burdens borne by those with southern coastlines. Greece, Cyprus, Italy, Malta, Spain and Portugal have been at the forefront of calling for central and northern EU states to contribute money and consider burden-sharing to help the southern states cope with large numbers of arriving migrants.

The Commission has responded with several new pots of money designed to ease the financial burden on receiving states. The Commission is about to solicit member state proposals for \$4.2 billion to be spent between now and 2013 for external border control, refugee reception and processing, migrant integration, and returns of deported migrants. But there is no political will for burden sharing in the sense of having interior or northern states accept and process migrants who arrive elsewhere in the EU. Each country is expected to deal with the migrants it receives. Sweden, for example, notes that it may not be receiving many boat people from Africa, but it has processed half of the asylum requests from Iraqi refugees received by the EU. In 2007, Sweden received 18,559 asylum requests from Iraqis out of a total of 37,034 filed throughout the entire EU, according to UNHCR.

¶4. On asylum, the EU is slowly moving toward a common asylum policy and expects to have full harmonization by 2010 (though Commission contacts say it is more likely to slip until at least 2012). In the meantime, differences in policies have meant that asylum-seekers receive different treatment depending on where they file their claims. The Dublin regulation, in an attempt to discourage asylum shopping, requires member states to return asylum seekers to the country of first entry within the EU. But UNHCR in April publicly recommended that EU member states not return asylum seekers to Greece because of inadequacies in its protection and processing capabilities. Greece approved 146 requests for asylum out of 25,113 received in 2007, according to UNHCR.

#### Toward a common EU migration policy

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¶5. The Commission plans to release a paper in June outlining the basic principals of a new common European migration policy. France will assume the rotating EU presidency on July 1 and plans to shepherd the proposal through the political process with the goal of asking the European Council of Ministers to approve a common migration policy in October. Some of the anticipated highlights of the common policy include the following, according to Commission contacts: 1) A prohibition on mass amnesties or regularizations of illegal migrants, which are seen as pull factors encouraging more illegal migrants to come. Spain regularized the status of some 600,000 illegal immigrants two years ago, and a soon-to-be-released Commission study shows that the pace of illegal migration accelerated following that decision. Member states will retain the option of regularizing the status of individuals on a case-by-case basis, but not in groups. 2) A framework for immigration governance, potentially including an oversight board that can evaluate policies and rules throughout the Union. 3) Sharing of best practices on integration of migrants with a goal of putting immigrants on a path to citizenship. Current practice varies widely among member states. France has proposed a mandatory "immigration contract" requiring individual immigrants to complete civics and language courses in return for financial support from the government.

#### Commission initiatives

¶6. The European Commission currently is working on a number of labor migration regulations that flowed from a 2005 Green Paper noting that Europe, with its declining birth rates, needs to compete more vigorously with the U.S., Canada, and Australia for skilled migrant labor. The proposed "blue card," modeled on the U.S. green card, would give EU residency permits to highly-skilled workers, harmonize the admission procedures throughout the EU, and spell out a common set of rights for legal migrants, according to Commission officials. Other labor directives being developed target seasonal workers, internal corporate transfers, and paid trainees. The Commission is not currently contemplating any directives for unskilled workers, according to Martin Schieffer, Head of Sector for Immigration at the EC's

17. The Commission also has been working on a set of agreements governing the return of deported migrants and denied asylum seekers to their countries of origins. The EU is in the final stages of approving a "returns directive" that sets common deportation procedures for illegal immigrants in the member states and covers a re-entry ban for returnees, the amount of time a migrant can be detained while their case is being reviewed, and provides safeguards for returnees. The European Parliament and the European Council agreed on a compromise text for the Returns Directive on April 23, and Parliament is scheduled to consider it for approval on June 4-5. In order to ensure that home countries will take back their citizens as well as those who transited their territory en route to the EU, the EU has negotiated formal readmission agreements with a number of countries of migrant origin. Schieffer said such readmission agreements have a deterrent effect as shown by the sharp decrease in illegal migrants entering the EU through Albania once the EU negotiated a readmission agreement with that country.

18. Another concept the Commission is working to implement is "circular migration," which grew out of an initiative by the Directorate General for Development to link migration and development. The idea of circular migration is that employees from developing countries would work in the EU for up to several years, then go back to their home countries but retain the option to return to Europe to work in the future. It is much like the idea of seasonal workers, but has additional aspects like allowing the migrant to retain an EU residency permit for several years if he or she decides to return home for a trial period. In theory, circular migration benefits the EU by providing it with labor, it benefits the migrant by providing him with income and marketability, and it benefits the country of origin by enhancing the skills of its workers. In reality, it has been difficult to implement because it is more of a policy concept than an operational regulation, according to Commission officials. The Commission is establishing two pilot projects called "mobility partnerships" with Moldova and Cape Verde that provide a legal framework for circular migration.

#### Potential pitfalls

19. As the EU moves toward its common migration policy, it faces considerable public skepticism about the added value of

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migrants. Right-wing parties in Austria, Belgium, Italy and elsewhere have won electoral victories in recent years running on anti-immigration platforms. Terrorist attacks in Western Europe by second- and third-generation immigrants raised questions about whether integration is working. JLS Commissioner Franco Frattini, an advocate for a "European approach" to migration, recently announced that he will be stepping down, and it remains to be seen whether his replacement, Jacques Barrot, will embrace as fully the idea of an EU migration policy. The UK, Ireland, and Denmark have all been historically wary of ceding sovereignty over migration issues to the European Commission and have opted out of many EU initiatives on borders, immigration and asylum. On the other hand, the new Lisbon Reform Treaty currently being ratified will strengthen the Commission's hand in migration matters by removing the pillar system that required unanimous approval by the Council with qualified majority voting that requires codecision between the European Parliament and Council. And the fact that France, with the backing of President Sarkozy, will be pursuing the common EU migration policy as one of its top presidency goals means that it will continue to be at the top of the EU agenda through 2008.

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